

Before the  
FEDERAL COMMUNICATIONS COMMISSION SEP 29 1995  
Washington, D.C.

In the Matter of

Amendment of Part 90 of the  
Commission's Rules to Facilitate  
Future Development of SMR Systems  
in the 800 MHz Frequency Band  
Commercial Mobile Radio Services

and

Implementation of Section 309(j)  
of the Communications Act -  
Competitive Bidding  
800 MHz SMR

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PR Docket No. 93-144  
RM-8117, RM-8030  
RM-8029

PP Docket No. 93-253

**EX PARTE COMMENTS OF  
ANHEUSER-BUSCH COMPANIES, INC.**

Anheuser-Busch Companies, Inc. ("Anheuser-Busch"), by its attorneys, submits these ex parte comments in the above-captioned dockets.

**STATEMENT OF INTEREST**

Anheuser-Busch is a licensee of 800 MHz trunked, internal-use only business radio licenses. Anheuser-Busch relies on the business radio service to efficiently and safely coordinate its workforce and customers at its plant facilities and amusement parks throughout the United States. This proceeding proposes, inter alia, to change the rules and policies concerning eligibility of the

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Specialized Mobile Radio ("SMR") service for 800 MHz channels for General Category and for inter-category sharing ("Pool Channels"). As a holder of business radio licenses allocated for the General Category and the Pool Channels, Anheuser-Busch filed comments and reply comments in this proceeding.

### INTRODUCTION

In the Further Notice of Proposed Rule Making ("FNPRM") of the subject proceeding, the Federal Communications Commission ("Commission") proposes a variety of licensing and competitive bidding rules for the 800 MHz SMR service. Specifically, the Commission proposes to auction Major Trading Area ("MTA") and "local" 800 MHz SMR licenses. In addition, the Commission proposes to change the regulation of 800 MHz SMRs for the General Category channels and the Pool Channels. The Commission tentatively concludes that it should revise its eligibility rules for the General Category and Pool Channels to prohibit SMR and non-SMR applicants from applying for the same channels in the future. The FNPRM also seeks comment on whether the Commission should: (1) eliminate SMR eligibility for all future licensing for General Category and Pool Channels, (2) prohibit future inter-category sharing by SMR applicants on Pool Channels, but designate a portion of the General Category for SMR-only,

and (3) designate the entire General Category for future licensing exclusively to SMR applicants.

On September 18, 1995, certain staff of the Wireless Telecommunications Bureau ("Bureau") held a meeting in which they disclosed the Bureau's tentative recommendation in the proceeding.<sup>1</sup> Although there is no official transcript or summary of this meeting available to the public, a press report indicates that the Commission will: (1) freeze the licensing of the 150 General Category channels until the Commission devises a new licensing scheme, and (2) use the spectrum currently allocated to the General Category as a place to relocate incumbent SMR licensees operating in the upper 800 MHz band.<sup>2</sup>

I. The Commission Should Not Change the Eligibility Rules or Allocation Scheme for the 800 MHz Pool Channels

As a Private Mobile Radio Service ("PMRS") licensee, Anheuser-Busch requires 800 MHz PMRS spectrum to meet its internal wireless communications requirements. As Anheuser-Busch explained in its comments and reply comments filed in this proceeding, Anheuser-Busch relies on its domestic 800 MHz internal systems to ensure the safety and efficiency of its plant facilities and

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<sup>1</sup> See *FCC Gives Industry Early Peek at Likely 800 MHz SMR Decision*, Land Mobile Radio News, Vol. 49, No. 38, 1-3 (September 22, 1995).

<sup>2</sup> *Id.* at 3

the precise coordination of its land transportation operations at breweries and amusement parks located throughout the United States. Due to the unavailability of 800 MHz business radio frequencies for new license applicants, Anheuser-Busch has had to acquire 800 MHz PMRS systems located near its facilities. Over the course of the last year (pre-dating the inception of this proceeding), Anheuser-Busch has begun to acquire 800 MHz PMRS facilities and order equipment in reliance on the existing regulatory structure. Under these circumstances, any change of the existing 800 MHz rules governing the Pool Channels will significantly affect Anheuser-Busch and similarly situated PMRS licensees. Accordingly, Anheuser-Busch reiterates its request that the Commission not change the existing eligibility rules and allocation scheme for the Pool Channels.

In addition, even if the Commission intends to adopt its proposals affecting the Pool Channels, Anheuser-Busch urges that the Commission not freeze the licensing of the General Category channels. Due to the dearth of Business Radio channels and the current freeze on Inter-Category channels, the General Category channels are the only remaining resource of 800 MHz spectrum available to PMRS entities. Further, 800 MHz internal-use licensees have no other adequate communications choices available to them that meet their requirements of security, exclusivity and efficiency. Therefore, freezing the General Category for any period of time merely to provide the Commission with the

administrative flexibility to devise a new licensing scheme is not a basis significant enough to outweigh the hardship such a decision would impose upon the PMRS community.<sup>3</sup>

II. If the Commission Adopts a Freeze for General Category channels, Then the Commission Should Apply the Same Exceptions to the Freeze It Adopted for Other 800 MHz Spectrum

If the Commission adopts a General Category freeze, then the Commission should extend its existing policy to except assignment, transfer and within-service-area modification applications from licensing freezes.<sup>4</sup> By extending this freeze exception to the General Category, the Commission would meet its obligation to treat similarly situated 800 MHz applicants similarly<sup>5</sup> and would

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<sup>3</sup> In addition, as Anheuser-Busch stated in its Comments and Reply Comments in this proceeding, the Commission is legally prohibited by the Omnibus Budget Reconciliation Act of 1993 from changing the way PMRS spectrum is licensed merely to create more "auctionable" 800 MHz spectrum. See Comments and Reply Comments of Anheuser-Busch.

<sup>4</sup> See Third Report and Order, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, 9 FCC Rcd 7988, 8047-8048 (1994) (adopting a freeze applying to applications for new applications for the 800 MHz 280 SMR category channels and excepting therefrom applications for transfer, assignment and within-service-area modification applications), and Order, DA 95-741, 10 FCC Rcd 7350 (April 5, 1995) (adopting a freeze on new applications for 800 MHz intercategory channels and excepting therefrom the applications for transfer, assignment and within-service-area modification applications).

<sup>5</sup> Melody Music v. FCC, 345 F.2d 730, 732-733 (D.C. Cir. 1965) (requiring that the Commission treat similarly situated applicants in a similar manner).

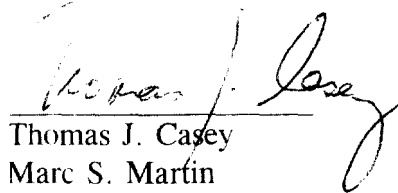
allow PMRS licensees such as Anheuser-Busch to conclude transactions which it has already commenced in reliance of the existing regulatory regime.

### CONCLUSION

For the aforementioned reasons, Anheuser-Busch submits that if the Commission adopts a freeze on General Category channels, it should apply the same exceptions to the freeze that it adopted for other 800 MHz spectrum.

Respectfully submitted by:  
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Dated: September 29, 1995

## **CERTIFICATE OF SERVICE**

I, Tracey DeVaux, do hereby certify that a true and correct copy of the foregoing Comments was hand-delivered on this 29th day of September 1995 to the following persons:

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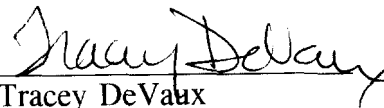
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